IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-02-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE R. SUDHAKAR

WRIT PETITION NO.18916 OF 2004
and
WPMP.No.2759 of 2006

U. Arulmozhi .. Petitioner

Vs.

1. The Director of School Education,
   D.P.I. Complex,
   College Road,
   Nungambakkam, Chennai 6.

2. The Chief Educational Officer,
   O/o. Chief Educational Office,
   Thiruvarur.

3. The District Educational Officer,
   O/o. District Educational Office,
   Thiruvarur.

4. The Registrar,
   Tamil Nadu Administrative Tribunal,
   Chennai 104. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the records of the 2nd respondent in connection with his proceedings Na.Ka.No.4798/A1/98 dated 15.03.1999 and Na.Ka.No.4798/A1/98 dated 25.6.2004 and the fourth respondent in connection with order dated 15.3.2004 in T.A.No.240 of 1999, quash the same and consequently direct the respondent to reinstate the petitioner and permit to continue to work with all consequential service and monetary benefits.

For Petitioner : Ms. T. Aananthi
For Respondents 1to3: Mr.V. Raghupathy
Govt. Pleader

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O R D E R

(Order of the Court was made by P.K. MISRA, J)

Heard the learned counsels appearing for the parties.

2. The present writ petition has been filed to quash the order passed in T.A.No.240 of 1999 dated 15.3.2004 and to reinstate the petitioner in service with all consequential service and monetary benefits.

3. The present petitioner's father, namely, Thiru. Ulaganathan, died on 31.7.1990 in harness, while he was serving as a Teacher. Subsequently, the present petitioner, who is the daughter of the deceased, filed an application on 31.6.1994 for appointment on compassionate ground. Admittedly, at that stage, she was unmarried and her three sisters and brother were minors and due to certain reasons, her mother, the widow of the deceased, was not in a position to seek appointment. In view of the indigent circumstances of the family members, the application was considered favourably and the petitioner was appointed on 15.9.1998. However, in the meantime, the petitioner had got married on 16.5.1995. It is specifically averred in the affidavit that the petitioner married her maternal uncle with the understanding that such person would have no objection to the petitioner maintaining the family members of her deceased father from out of the salary of such employment. After about six months of such employment, without holding any enquiry, service of the petitioner was terminated on 15.3.1999. Against such order of termination, the petitioner filed W.P.No.8429 of 1999, wherein a stay order had been passed on 5.5.1999. Pursuant to such stay order, the petitioner was reinstated in service on 1.10.2001. Subsequently, the writ petition itself was transferred to the Tamil Nadu Administrative Tribunal and numbered as T.A.No.240 of 1999, which was dismissed on merit on 15.3.2004. Based on the dismissal order, the petitioner was ousted from service on 25.6.2004 and the present writ petition is directed against the order of the Tribunal dated 15.3.2004. Even though an order of stay had been passed on 5.7.2004 and subsequently made absolute on 7.1.2005, by the order passed in Review Appln.No.18 of 2005, filed by the present Respondents 1 to 3, the stay order had been recalled. Undisputedly, after 25.6.2004, the petitioner was not in service.

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4. In the background of the aforesaid facts and developments, learned counsel for the petitioner has submitted that the order of termination, which has been passed without holding any enquiry, is not sustainable in law. Learned counsel has further submitted that at the time when the petitioner filed the application for appointment on compassionate ground, admittedly she was unmarried, and, therefore, merely because she had got married by the time her application was considered and allowed and she joined service, it cannot be said that there has been suppression of any material fact warranting removal from service.

5. Learned Government Pleader appearing for the State has submitted that as per the relevant G.O., only an unmarried daughter is eligible to apply for appointment on compassionate ground and the married daughter is not entitled to get any employment on the basis of compassionate ground and, therefore, the petitioner, who was married at the time of actual employment, was not eligible.

6. As a matter of fact, the Tribunal has dismissed the Original Application filed by the petitioner on the above reasoning.

7. After having heard the learned counsels appearing for both sides and after going through the materials and the relevant G.Os., we are unable to sustain the order passed by the Tribunal.

8. There is no dispute that the Government has made provision for appointment on compassionate ground, obviously with a view to enable the family members of the deceased employee to tide over immediately the financial stringency on account of the death of the breadwinner in the family. It is of course true that as per the G.O.Ms.No.73, Employment Services dated 26.10.1983, only an unmarried daughter is eligible and not a married daughter. However, there is no requirement in the G.O. that at the time of actual employment such unmarried daughter should continue to be unmarried nor there is any requirement that after an unmarried daughter gets employment on the compassionate ground, she cannot marry in future. There is no dispute that the present petitioner was eligible to make the application and she make an application as an unmarried daughter. The appropriate authority took about 3 to 4 years to finalise the matter. Merely because the unmarried daughter got married in the meantime and that too with a specific understanding that her husband would have no objection to her maintaining the members of the family of her father, it cannot be said that such person had got employment by suppressing any material fact.

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9. We have also perused the format in which such applications are required to be made. There is no column in such format to indicate that an applicant at the time of her employment is required to disclose whether she is married in the meantime nor there is any requirement that an unmarried daughter after getting such appointment on compassionate ground is required to remain as a spinster for ever. If an unmarried daughter after getting employment on compassionate ground has liberty to marry, we fail to understand as to why an unmarried daughter, who makes such application and is otherwise eligible, keeping in view the financial aspect, would be deprived of the right of getting employment, more particularly when there is no objection raised by any other eligible person. As a matter of fact, in the present case, the mother and the petitioner's brother, who has become major in the meantime, have filed affidavits stating that they have no objection to the petitioner continuing in service.

10. For the aforesaid reasons, we are unable to sustain the order passed by the Tribunal and such order is hereby quashed. The petitioner shall be deemed to be continuing in service from the date of order of removal. However, no amount would be payable for the period from 25.6.2004 till the date of rejoining pursuant to the present order. The petitioner shall be permitted to rejoin in service within a period of 30 days from the date of receipt of a copy of this order. The entire period shall be notionally counted for the purpose of seniority, increments, pension, and other service benefits.

11. The writ petition is accordingly allowed in part, subject to the observations and direction made above. No costs. Consequently, WPMP.No.2759 of 2006 is closed.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

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3. The District Educational Officer,
   O/o. District Educational Office,
   Thiruvarur.

+ 1 cc to M/s. T. Aananthi, Advocate SR No.7768

+ 1 cc to the Government Pleader SR Nos.7809

AUA(CO)
SR/13.3.2006

ORDER IN WP.No.18916/2004

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